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AUTHOR Mack, Michael G.; Norwood, Elizabeth R.
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ABSTRACT

A student teacher has very limited authority in the classroom and his/her position with regard to the la[illegible]emains obscure. Very few statutes concerning student teachers' legal status exist, and there are even fewer court cases involving student teachers. (Specific statutes and cases are cited.) There are, however, numerous legal problems that both teachers and student teachers may have. These problems generally fall into one of the following four categories: (a) classroom discipline, (b) pupil injury, (c) controversial matters, and (d) teachers' rights. This paper presents both actual and hypothetical cases within each of the above categories involving student teachers and the law. Measures should be taken by each state to seek legislation clearly setting forth the legal status of student teachers and to issue some type of "preliminary certificate" which would provide the student teacher with clear legal rights. Teaching training institutions should also provide students with a law course that would deal with problems he/she might face while student teaching. (PB)

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The Student Teacher and The Law

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Michael G. Mack
Graduate of SIU Speech Dept.
Now with Cicero Illinois Police Department

and

Elizabeth R. Norwood
Assistant Professor; Speech Department
Southern Illinois University

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"STUDENT TEACHING AND THE LAW"

"Legally, the student teacher has no authority in the classroom. He should not punish a child; he does not promote or fail pupils. In law, however, the same responsibilities of a teacher, within the realm of his functioning without the authority or professional status."[1]

"The student teacher should avoid creating any situation which might eventually involve legal entanglements. The courts would no doubt construe the student teacher's legal rights as very limited in a case concerning pupil discipline."[2]

Obviously, a student teacher has very little authority in the classroom. This may be a reasonable explanation of his limited legal powers; nevertheless his position with regard to the law remains obscure and tenuous at best. Only the relatively slim number of statutes which follow seem pertinent.

SECTION I "THE LEGAL STATUS OF STUDENT TEACHERS".

1. All fifty states have some statutory provisions or implied authority for the setting up of teacher training institutions which provide students with teaching experience in the facilities of the states' various school districts.

For example, the Illinois statute 10-22.37 from the School Code of Illinois provides for:

"Agreements with teacher training institutions. To enter into agreements with those institutions to provide facilities for student teaching in the schools of the district. (Amended by Law 1969, H.B. 931, approved Aug. 5, 1969."[3]

2. Only two states in the union, Oregon and Connecticut, have defined the legal status of a student teacher by law. The following is Oregon's legal definition:

"342.980 Student Teacher; Authority to Teach; Contract Requirements and Effect.

Any student of a standard teachers' educational institute approved by the state board under ORS 342.120, who is assigned to teach in a training school has full authority to teach during the time the student is so assigned and such assignment has the same effect as if the student were a holder of a valid teaching certificate."[4]

3. Only in four states, Hawaii, Alaska, Rhode Island, and California are student teachers required to hold a teaching certificate prior to entering their clinical experience. The following is the California Educational Code statute 13159 concerning the legal status of the student teacher:

> "The holder (of a preliminary certificate) shall be deemed a certificated employee (emphasis supplied) of the district with respect to acts performed by him at the direction, suggestion, or command of the

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certificated employees under whose supervision and control the holder performs his duties whether or not such duties are performed entirely in the presence of the employee if the district assigned to be supervising the holder."[3]

4. Although not what one would call a legal fact, mixed fact appears to be the only study completed which considers a student teacher's legal rights. The information detailed below is from a 1966 study by Dr. Fred Hoelle.

"Legal aspects of Student Teaching" Indiana U. Bloomington, Research Study, Unk. Cooperative Research Project V-007.

The study examined only four legal aspects of student teaching. These four were: (1) The student teacher's right and authority to regulate pupil conduct; (2) The liability of the student teacher for pupil injury; (3) The legal responsibility of the institution which conducts the student teaching program for the student teacher; (4) The legal responsibility of the school corporation which utilizes student teachers, for the actions pupils of student teachers placed in its schools.

Hoelle sought statutes, attorney generals' opinions, and case law in 50 states. Due to a preliminary survey of various sources Hoelle found at this the following ten states yielded more information than any others: (1) California; (2) Connecticut; (3) Kentucky; (4) New Jersey; (5) New York; (6) N Dakota; (7) Pennsylvania; (8) Washington; (9) West Virginia; and (10) Indiana.

The conclusions Hoelle reached were as follows:

1. Authority to provide student teaching in the public schools - Only 2 of the ten provided expressed statutory authority for student teaching in the public schools. The other four states appeared to have implied authority. It may be said that student teaching in the schools studied was lawful.

2. Authority of the student teacher to regulate pupil conduct - Three categories were found: (1) no mention of this in the law; (2) authority implied by statutory language; and (3) authority was denied by courts decisions or attorney general's opinion.
   a. In five states, Connecticut, Indiana, New Jersey, New York, and Pennsylvania the law was silent on this point.
   b. A California state required the certification of student teachers, but only the supervising teacher appeared to possess the authority.
   c. A Kentucky attorneys general's opinion clearly stated that the student teacher had no authority.
   d. An implication existed in the Oregon statute that a student teacher could regulate pupil conduct, while the Supreme Court of the State of Washington held that student teachers were not teachers within the meaning of the law.
   e. The 1963 statute of West Virginia authorizing student teaching seemed to imply that the student teacher had authority; but in an earlier decision by the state Supreme Court, the court specifically held that student teachers

Suit as authorized by this subparagraph and
control of courts.

3. Legalities of the student boycott that might result. a. What penalties could parents even student. (1) As law of United parents. (2) Applicability Common to students and organizations through extended contract to punishment. (3) Specific coverage of student boycotts in anti-trespass statutes, and its use under decisions.

   a. Anti-legislative boundaries of Connecticut, and New York criminal anti-trespass statutes, during the advocated approach of the Supreme Court with that student boycotters who are arrested to their student anti-discrimination activities.

   b. Purposes of the two statutes, on the of Court with New York anti-trespass statute, only as applications of the legal consequences of the student boycott was found in statutes and in the absence of an intervening purpose.

   c. In New York, the Supreme Court found a student boycott negligible as an action constituting trespass on a public.

4. Legal considerations for the purposes and methods of student boycotts: The investigations included anything except in the areas of instruments where the Supreme Court held that a student boycott was admitted to violations of the United States Code, which being included within implementing a disturbance.

Public also found evidence on which to could have an adult act that enforce a student boycott to hold trustee to create problems for the defendant involving to public school, where proceedings of case from to and rights for his own legislation. An also student that it could be adopted that the cooperating statutes to public because to delegation his authority to the student boycotts. As for purposes to the student boycott himself, school districts was to rights of State to an enforcement operations.

Public which needed to substitute his general finding that students, court cases, etc., concerning student boycotts were school machines, rights, or non-criminal, and evidence accepted to the occupations that student boycotts are "accepted" to have the same rights as constitutional and substantial boundaries. In this assumptions were not an such perhaps that it could be possible to find standards, etc., concerning student boycotts. Since this acceptance of legal rights does exist, the persons with student are also cases which do cover student boycotts but also cases which can be applied to cover student boycotts.

Section C. Legal Sanctions and Student Boycotts and the Law

The number of actual cases which involve student boycotts and the law are very few. The circumstances cases were discussed and are described below:

1. The legal rights of a student boycott to receive compensation for injury while student boycotting.

"In California a student boycott was violated while engaged in student boycotting in a public school of that public. The question was whether the was entitled to compensation from the district under the state's workmen's compensation act."

[illegible]

[illegible]

"Based [illegible] [illegible] [illegible]

[illegible]

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Case 2 was drawn from an actual case decided before a California Court of Appeals in which the court upheld the teacher's right to wear his beard.

The court said, "What we hold is simply that, on the record before us, with the complete absence of any actual experience at the high school involved as to what the adverse effect of the wearing of a beard by a male teacher would be upon conduct of the educational processes there, beards as such, on male teachers, without regard to their general appearance, their neatness and their cleanliness, cannot constitutionally be banned from the classroom and from the campus.[19]

It is interesting to note that the substantial material disruption law also applies to teachers. As to the legality of the transfer to one of a lower position and pay, it has been held by the courts that, "Tenured teachers may be transfered for various reasons so long as there is no element of demotion to a lower position (NOT GRADE) or assignment of lower salary."[20]

Case 3 was a totally hypothetical case dealing with grounds for teacher dismissal. The teacher in this case is accused of incompetency, continually being late to school and class, and not having lesson plans.

In various court cases the following holds true: "Since a teacher holds a valid certificate, there is a presumption of competence before the law, and the burden of proof rests on the board of education. However the law required only average qualifications and ability. A teacher may be issued a warning without being given written notice and hearing that, unless the quality of his performance improves, dismissal will be recommended. The notice would allow the teacher a reasonable period to correct the alleged deficiencies."[21]

As for being fired on the spot, a tenured teacher has the protection of "Tenure Laws". Most laws prescribe procedures for dismissing a teacher. The procedures generally include the service of notice, the right of the teacher to a hearing, the right to be represented by counsel, and similar provisions.[22]

Case 4 was drawn from an actual court case decided before the United States Supreme Court in which the court upheld the teacher's right to freedom of expression. The board dismissed the teacher for writing a letter which allegedly contained false statements, claiming that they damaged the reputations of board members and school personnel. The board also claimed that because of the letter there would be disruptions among the faculty and there would be a complete breakdown in faculty communications.

"The court weighed the allegations of the board, but rejected them as being inconsequential in the case where a teacher's right of free speech is involved." The following is a brief statement: "Teachers are, as a class, the members of a community most likely to have informed and definite opinions as to how funds allotted to the operation of the schools should be spent. Accordingly, it is essential that they be able to speak out freely on such questions without fear of retaliatory dismissal."[23]

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"In sum, we hold that, in a case such as this, absence of proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak in issues of public importance may not furnish the basis for his dismissal from public employment.[24]

These hypotheticals have been presented to illustrate the numerous legal problems teachers and student teachers may have. The authors have detailed various types of cases which cover classroom discipline, pupil injury, controversial matters, and teachers' rights.

CONCLUSIONS

Efforts to compile a legal guide for student teachers have yielded very little actual legal fact. The presentation of the hypotheticals and related points of law have been an attempt to describe some practical legal areas involving teachers. It is apparent that student teachers are seldom if ever legally included in statues affecting teachers.

The authors believe that the inadequacies in current legislation call for the following measures to be taken:

1. A recommendation by members of the teaching profession that each state seek legislation clearly setting forth the legal status of the student teacher.

2. A recommendation that states without clear statutes concerning the legal status of student teachers issue some type of "preliminary certificate" (such as California's) which would provide the student teacher with clear legal rights.

3. An effort on the part of Teacher Training Institutions to provide their students with a law course that would deal with the legal problems they might face while student teaching.

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